

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Randa Tawadros-Gurgis, A130 739 397

Raouf Mankaryous, A73 182 559

Plaintiffs

MAGISTRATE JUDGE Mahel

vs.

Case No.:

Denis Riordan, Interim Director

Bureau of Citizenship and Immigration Services

JFK Federal Building

15 New Sudbury Street

Boston, MA 02203

COMPLAINT FOR

DECLARATORY RELIEF

IN THE NATURE OF

MANDAMUS

RECEIPT #
AMOUNT \$ 150
SUMMONS ISSUED fe 23
LOCAL RULE 4.1
WAIVER FORM
MCF ISSUED
BY DPTY. CLK. FOM
DATE 9/1/04

Eduardo Aguirre, Director

Bureau of Citizenship and Immigration Services

425 I Street, N.W.

Washington D.C. 20536

Tom Ridge, Secretary of Homeland Security

United States Department of Homeland Security

Nebraska Avenue Center, N.W.

Washington, D.C. 20508

Defendants

I. INTRODUCTION

1. This is an action for declaratory and mandatory relief, authorized by the Declaratory Judgment Act, 28 U.S.C. §1361, and the Administrative Procedure Act ("APA"), 5 U.S.C. §1551 et. seq. This action seeks to compel defendants to adjudicate the Refugee/Asylee Relative Petition which Plaintiff Randa Tawadros ("Mrs. Tawadros"), an asylee, filed on behalf of her husband, Raouf Mankaryous ("Mr. Mankaryous").

II. JURISDICTION

2. This Court has subject matter jurisdiction over the present action pursuant to 28 U.S.C.

§1331, Federal Question Jurisdiction; 28 U.S.C. §2201, the Declaratory Judgment Act; 5 U.S.C. §702, the Administrative Procedures Act; 28 U.S.C. §1361, regarding an action to compel an officer of the United States to perform his duty; and 8 U.S.C. §1329, the Immigration and Nationality Act (providing for jurisdiction in this Court over actions arising under that Act).

III. VENUE

3. 28 U.S.C. §1391(e), as amended, provides that in a civil action in which each Defendant is an officer or employee of the United States or any agency thereof acting in his official capacity, or under color of legal authority, or any agency of the United States, the action may be brought in any judicial district in which the Plaintiff in the action resides.
4. Plaintiffs Randa Tawadros and Raouf Mankaryous are residents of Ayer, Massachusetts. The Boston, Massachusetts office of the Bureau of Citizenship and Immigration Services (“CIS”) has taken jurisdiction over the Refugee/Asylee Relative Petition.

IV. PLAINTIFFS

5. Randa Tawadros and Raouf Mankaryous are natives and citizens of Egypt. On July 3rd, 2002, the Immigration and Naturalization Service (now reconfigured as the Bureau of Citizenship and Immigration Services) granted Mrs. Tawadros asylum in the United States (see copy of notice, attached). Her husband, Petitioner Raouf Mankaryous was included in her asylum application, and qualified for derivative asylee status 8 CFR Section 1208.21(c).

V. DEFENDANTS

6. Defendant Denis Riordan is the duly appointed Interim Director of the BCIS (a bureau of the Department of Homeland Security) office in Boston, Massachusetts. Defendant Eduardo Aguirre is the duly appointed Director of the CIS. Defendant Tom Ridge is the duly appointed Secretary of the DHS.

VI. FACTUAL ALLEGATIONS

7. Plaintiff brings this action to compel the CIS to adjudicate the application for adjustment of status which the plaintiff filed at the direction of the Board of Immigration Appeals on April 21st, 2003.
8. Raouf Mankaryous was ordered removed from the United States by the Board of Immigration Appeals (“BIA” or “the Board”) on May 13th, 2002. He appealed that decision to the Second Circuit Court of Appeals; that appeal is still pending. When his wife was granted asylum, he moved the Board to reopen the proceedings, in order to process him for derivative asylee status. In a decision dated April 3rd, 2003, the BIA recognized that Mr. Mankaryous “qualifies for derivative asylee status as the spouse of an alien granted asylum,” but instructed that, in order to achieve that benefit, his wife needed to file a Form I-730, Refugee/Asylee Relative Petition on his behalf (see copy of BIA decision).
9. Accordingly, on April 21st, 2003, Mrs. Tawadros filed a Form I-730 on Mr. Mankaryous’ behalf. The CIS issued a receipt notice instructing that normal processing times for such

petitions range from 230 to 260 days (see copy of petition and receipt notice).

10. On July 9th, 2004, counsel for the Petitioners entered into a stipulation with Assistant United States Attorney Joseph Pantoja, counsel for the appellee in Mr. Mankaryous' petition for review. In that stipulation, the parties agreed that Petitioners would file a mandamus action in the Federal District Court to compel the CIS to adjudicate the I-730.
11. On July 15th, 2004, counsel for the Petitioners called the CIS to inquire as to the status of the case. The officer with whom she spoke informed her that the case was still pending, but that the CIS was at that time adjudicating I-730s which had been filed after Mrs. Tawadros' petition. Because the officer could not determine why the petition had not been adjudicated, she sent an internal inquiry to the office which had the file (the Vermont Service Center). On August 1st, 2004, counsel discovered that the file had been transferred from Vermont to the Boston District Office, and that the petition had not been adjudicated (see statement of Ilana Etkin Greenstein).
12. Counsel has contacted the Boston office to request that the case be adjudicated, but has not received an answer (see copy of letter dated August 18th, 2004).

VII. STATUTORY AND REGULATORY FRAMEWORK

13. Eight CFR section 1208.21(a) provides that "a spouse... or child... also may be granted asylum if accompanying, or following to join, the principal alien who was granted asylum..." Subsection (c) provides that, "[w]hen a spouse or child of an alien granted asylum is in the United States, but was not included in the asylee's application, the asylee may request accompanying or following-to-join benefits for his/her spouse or child by

filing for each qualifying family member a separate Form I-730, Refugee/Asylee Relative Petition, and supporting evidence, with the designated Service office, regardless of the status of the spouse or child in the United States.”

VIII. CLAIM FOR RELIEF

14. The Defendants have, without explanation, failed to adjudicate Plaintiff Randa Tawadros’ petition.
15. The Defendants owe the Plaintiffs a duty to act upon the petition in a timely manner, and have unreasonably refused to perform that duty. That refusal has had a significant detrimental affect on Plaintiff Raouf Mankaryous, who faces deportation to a country where he fears that his life will be threatened, and to Plaintiff Randa Tawadros, who faces the prospect of being permanently separated from her husband or following him, with their two United States children, to a country where she two fears for her life. Should Mrs. Tawadros follow her husband to Egypt, she will lose her asylee status in the U.S.
16. The Plaintiffs have made every possible attempt under the available administrative procedures to compel the Defendants to adjudicate Plaintiff Tawadros’ petition.

IX REQUEST FOR ORAL ARGUMENT

17. Plaintiffs believe that oral argument would assist the Court in reaching a decision. For that reason, the Plaintiffs respectfully request the opportunity to present oral argument to this Court.

WHEREFORE, Plaintiffs pray that this Court:

1. Order the Defendants to adjudicate Plaintiff Randa Tawadros' I-730 Refugee/Asylee Relative Petition for her husband, Plaintiff Raouf Mankaryous and,
2. Award the Plaintiffs attorney's fees, costs and expenses under the Equal Access to Justice Act and any other relief which this Court deems proper under the circumstances.

Respectfully submitted,
Randa Tawadros,
Raouf Mankaryous, by their attorney,
Ilana Etkin Greenstein



Kaplan, O'Sullivan & Friedman, LLP
10 Winthrop Square, 3rd floor
Boston, MA 02110
(617) 482-4500.

CERTIFICATE OF SERVICE

I, Ilana Etkin Greenstein, hereby certify that I have served a copy of the attached Complaint for Declaratory Relief in the Nature of Mandamus by regular mail, postage prepaid, upon:

Denis Riordan, Interim Director
Bureau of Citizenship and Immigration Services
JFK Federal Building
15 New Sudbury Street
Boston, MA 02203


Eduardo Aguirre, Director
Bureau of Citizenship and Immigration Services
425 I Street, N.W.
Washington D.C. 20536

Tom Ridge, Secretary of Homeland Security
United States Department of Homeland Security
Nebraska Avenue Center, N.W.
Washington, D.C. 20508

Henry Hanley, Esq.
Department of Homeland Security
Office of District Counsel
JFK Federal Building, Room 425
15 New Sudbury Street
Boston, MA 02203

Joseph Pantoja, Esq.
Assistant U.S. Attorney
U.S. Attorney's Office
86 Chambers St., 3rd floor
New York, NY 10007

this 30th day of August, 2004




Ilana Etkin Greenstein

Affidavit of Ilana Etkin Greenstein

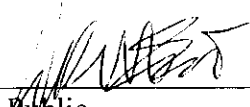
1. My name is Ilana Etkin Greenstein. I am an attorney licensed to practice in the State of Massachusetts.
2. I represent Randa Tawadros and Raouf Mankaryous in their immigration matters.
3. On July 15th, 2004, I called the Citizenship and Immigration Services to inquire as to the status of the I-730 Refugee/Asylee Relative Petition which this office assisted Mrs. Tawadros in filing on Mr. Mankaryous' behalf. The officer with whom I spoke informed me that the petition was still pending, and that CIS was then adjudicating petitions which had been filed after Mrs. Tawadros'. Because the officer was unable to glean why the petition remained pending at this late date, she sent a formal inquiry through the CIS' internal system, to the office which had jurisdiction over the petition (the Vermont Service Center).
4. On August 2nd, 2004, Mr. Mankaryous called me to tell me that a CIS officer had informed him that his case had been transferred from the Vermont Service Center to the Boston District Office.
5. Our office made several attempts to contact the Litigation Unit in Boston, to determine why the petition had been transferred, and to request that it be adjudicated. On August 18th, we sent a letter to Assistant Chief Counsel Henry Hanley, requesting that the petition be adjudicated.
6. To date, CIS has not adjudicated the petition and has not explained why the case was transferred to Boston.

Signed and sworn this 30th day of August, 2004 under the pains and penalties of perjury,



Ilana Etkin Greenstein

On this 30th day of August, 2004, before me, the undersigned notary public, personally appeared Ilana Etkin Greenstein, proved to me through satisfactory means of identification which were driver's license, to be the person whose name is signed on the preceding or attached document.



Notary Public

My commission expires: 5/21/2006

JS 44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Randa Tawadros - Gurgis

(b) County of Residence of First Listed Plaintiff Middlesex
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Kaplan, O'Sullivan & Friedman
10 Winthrop Sq., 3rd floor
Boston, MA 02110

DEFENDANTS

Denis Riordan, Interim Director CIS

County of Residence of First Listed
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

Ilana Greenstein
Harvey Kaplan

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RS1 (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

28 USC §1361, 5 USC §1551 (See attached complaint)

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint. JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY N/A JUDGE DOCKET NUMBER

DATE 9/1/2004 SIGNATURE OF ATTORNEY OF RECORD *Harvey Kaplan*

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Randa Tawadros- Gurgis v Denis Riordan
-
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
N/A
-
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
YES ☐ NO ☒
- If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
YES ☒ NO ☐
- A. If yes, in which division do all of the non-governmental parties reside?
Eastern Division ☒ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Ilana Greenstein, Harvey Kaplan

ADDRESS Kaplan, O'Sullivan + Friedman, 10 Winthrop Sq, 3rd floor Boston MA 02110

TELEPHONE NO. (617) 482-4500